

DISPATCH AGREEMENT

This DISPATCH AGREEMENT (the “Agreement”) is made and entered into as of May 2, 2002, by and between the Department of Water Resources, an agency of the State of California, with respect to its responsibilities pursuant to California Water Code Section 80000 *et seq.* regarding Department of Water Resources Electric Power Fund separate and apart from its powers and responsibilities with respect to the State Water Resources Development System (“Department”), and CALPEAK POWER – PANOCHE LLC (“Seller”).

RECITALS

A. To help further the objective of assuring a reliable supply of electricity for California’s retail end-use customers, on August 14, 2001, the Department entered into that certain Power Purchase Agreement dated as of August 14, 2001 by and between CalPeak and the Department (the “Original Contract”).

B. In January, 2002, the Parties commenced discussions regarding renegotiation of the Original Contract. On May 2, 2002, the Department and CalPeak executed that certain Amended and Restated Power Purchase Agreement (the “Amended PPA”), which Amended PPA supercedes the Original Contract.

C. This Agreement reflects the Parties’ agreement regarding the meaning of “Dispatch Limits” for the period during which Department, or another Governmental Authority that assumes Department's rights or obligations pursuant to Section 12.10(c) of the Amended PPA, is the counter party to the Amended PPA. For the avoidance of doubt, if at any time and for any reason Department assigns the Amended PPA, or assigns its rights or obligations under the Amended PPA, to a Qualified Electric Corporation, this Agreement will automatically terminate and be of no further force or effect, and the term “Dispatch Limits” will be defined as set forth in Appendix D to the Amended PPA.

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

Section 1. Term. The Agreement shall remain in effect for so long as the Amended PPA is in effect; provided, however, that the Agreement shall automatically terminate and be of no force or effect upon any novation of the Amended PPA or any assignment by Department of its rights and obligations under the Amended PPA to a Qualified Electric Corporation.

Section 2. Definitions. All capitalized terms not otherwise defined herein shall have the meanings set forth in the Amended PPA.

Section 3. Dispatch Limits. During the term of this Agreement, for purposes of Department's right to dispatch the Facility pursuant to the Amended PPA, the Dispatch Limits shall be the following:

(a) Dispatch For Energy

- (i) Department shall have the right to schedule dispatch for Energy on a day-ahead basis, provided however, that Department may adjust dispatch schedules upwards or downwards on a real-time basis to the extent Facility capacity or Energy is not scheduled to another purchaser on a day-ahead or real-time basis or otherwise committed by Seller, subject to an unlimited number of upward dispatch schedule adjustments and a maximum of fifteen (15) downward dispatch schedule adjustments per annum, and subject to Department's responsibility for any Fuel cost impacts or fuel imbalance charges, which shall be provided by Seller to Department at the time Department requests any real-time changes. To the extent any such costs are not identified by Seller and accepted by Department, all such costs shall be paid by Seller. Hours adjusted upward on a real-time basis shall not factor into the Mechanical Availability Percentage, and shall count toward Dedicated Hours. Hours adjusted downward on a real-time basis shall not factor into the Mechanical Availability Percentage, and shall count toward Dedicated Hours as if no downward adjustment had occurred. In the event Energy is scheduled for dispatch to a purchaser other than Department on a day-ahead or real-time basis, Seller shall notify Department by facsimile, telephone or email of such scheduling as soon as is practicable.
- (ii) For purposes of this Section 3(a), Department shall schedule dispatch for Energy consistent with the following scheduling notification requirements: Department shall notify Seller (A) by 5:45 a.m. Pacific Standard Time as such time may change from time to time consistent with normal WSCC prescheduling guidelines and practices; or (B) otherwise thirty (30) minutes before the time required to schedule gas purchases or market power sales, whichever is sooner.

(b) Dispatch for Reservation

- (i) Department shall have the right to reserve the Facility for a minimum of eight (8) consecutive hours on a day-ahead basis. For the hours Department has reserved pursuant to this Section 3(b)(i), Department may request that Seller schedule Energy in the intra-day market or request, pursuant to Section 3(c), that Seller bid Energy or capacity into the market for Ancillary Services (defined

below) on a real-time basis. Hours reserved and Energy scheduled pursuant to this Section 3(b) shall not count toward Mechanical Availability Percentage, and shall count toward Dedicated Hours.

- (ii) For purposes of this Section 3(b), the Department shall reserve capacity consistent with the following scheduling notification requirements: Department shall notify Seller (A) by 5:45 a.m. Pacific Standard Time as such time may change from time to time consistent with normal WSCC prescheduling guidelines and practices; or (B) otherwise thirty (30) minutes before the time required to schedule gas purchases or market power sales, whichever is sooner.
- (iii) In addition to all costs and liabilities for which Department is liable under the Amended PPA, Department shall be responsible for all incremental costs and liabilities that arise in connection with or as a result of Department's right to reserve capacity and schedule Energy for the hours it has reserved pursuant to this Section 3(b).

(c) Dispatch for Ancillary Services

- (i) Seller shall use commercially reasonable efforts to provide to Department, at Department's request, those services commonly known as, and currently defined in the Cal ISO Tariff as non-spinning reserve, spinning reserve, and replacement ("Ancillary Services"). Seller's obligations pursuant to this Section 3(c)(i) include, but are not limited to, using commercially reasonable efforts to: (A) ramp up the Facility in fewer than thirty (30) minutes; (B) at Department's instruction, make bids into the Cal ISO Ancillary Services markets, or such other market for Ancillary Services that may then exist, of hours reserved by Department pursuant to Section 3(b); (C) comply with (i) any resulting dispatch instructions from Cal ISO pursuant to all Cal ISO protocols and the Cal ISO Tariff or, (ii) such dispatch instructions from such other market according to its applicable protocols and/or tariff; and (D) pay any resulting Ancillary-Services related revenues received from Cal ISO or such other applicable market to the Department. Hours dispatched pursuant to this Section 3(c) shall not count toward Mechanical Availability Percentage, and shall count toward Dedicated Hours.
- (ii) For purposes of this Section 3(c), the Department shall dispatch for Ancillary Services consistent with the following scheduling notification requirements: Department shall notify Seller (A) by 5:45 a.m. Pacific Standard Time day-ahead for Energy bid into the

day-ahead Ancillary Services market and (B) by not later than two (2) hours in advance of the Cal ISO or other auction bid deadline for Energy bid into the real-time Ancillary Services market.

- (iii) In addition to all costs and liabilities for which Department is liable under the Amended PPA, Department shall be responsible for all incremental costs and liabilities that arise in connection with or as a result of Department's right to dispatch Ancillary Services pursuant to this Section 3(c), including without limitation: (A) all fees, costs and penalties arising under the Cal ISO Tariff's ancillary services provisions or under the Ancillary Services provisions of such other market for Ancillary Services that may then exist, including without limitation costs to obtain and maintain certification from the Cal ISO or other market to provide Ancillary Services as such certification process is described in the Cal ISO Tariff or in the provisions of such other market for Ancillary Services that may then exist; (B) all fees, costs and penalties arising from the scheduling and/or procurement of transmission, Energy, or fuel to or from the Delivery Point, including without limitation transaction fees, imbalance charges and penalties; and (C) all variable operating and maintenance fees and expenses to the extent such fees and expenses exceed the fees and expenses Seller would have incurred if Seller were providing Energy scheduled on a day-ahead basis pursuant to Section 3(a).

(d) General

The following limitations shall apply to Department's dispatch regardless of whether Department is dispatching for Energy, Reservation, or Ancillary Services:

- (i) The maximum dispatch level shall be equal to the Rated Capacity adjusted for ambient temperature with inlet cooling in service. Department may pre-schedule energy in hourly amounts of integral units not to exceed the Rated Capacity.
- (ii) Department shall dispatch to the Delivery Point.
- (iii) If the Facility is scheduled to run during a Day, it shall be called for a minimum of four (4) consecutive hours. Dispatch scheduling will allow for thirty (30) minutes for the Facility to ramp up to scheduled capacity; provided however, that Seller shall use commercially reasonable efforts to ramp up the Facility in fewer than thirty (30) minutes when Department is dispatching the Facility for Ancillary Services-pursuant to Section 3(c).

- (iv) The Facility may not be called for Start-Up more than two (2) times per Day.
- (v) Seller shall be entitled to receive all payments from the Cal ISO related to schedule deviations; provided, however, if a schedule change is directed by Department, Department shall be responsible for all charges due to the Cal ISO, and entitled to receive all payments from the Cal ISO related to such schedule deviations.
- (vi) Department may not dispatch the Facility during a Scheduled Maintenance Outage.
- (vii) Department may not dispatch the Facility during an Uncontrollable Force to the extent that Seller is unable to provide all or part of the Contract Capacity or Energy as a result of the Uncontrollable Force.
- (viii) Department may not dispatch the Facility during a Delivery Event to the extent that Seller is unable to provide all or part of the Contract Capacity or Energy as a Result of the Delivery Event.
- (ix) Department shall dispatch the Facility according to Prudent Industry Practice, including without limitation consistently with all applicable technical and legal (including permit) limitations.

Section 4. Event of Default. For the avoidance of doubt, provided that Seller has used commercially reasonable efforts as required under Section 3(c), Seller's failure to provide Ancillary Services on behalf of the Department shall not constitute an event of Default under this Agreement or under the Amended PPA, and Department shall pay any costs required under the Cal ISO Tariff or under the provisions of such other market that may then exist associated with such failure. However, in the event of intentional conduct of Seller, or a decision of Seller for economic reasons, resulting in the non-delivery of Energy or Ancillary Services as reasonably determined by Department based on all reasonably ascertainable facts and circumstances, such an event shall be an Event of Default under this Agreement and the Amended PPA and the Department shall be entitled to damages set forth in Article VII of the Amended PPA.

Section 5. Non-Binding Arbitration. Seller and the Department shall attempt to resolve any claim, counterclaim, demand, cause of action, dispute, or controversy arising out of or relating to this Agreement, any provision hereof or, the alleged breach thereof, involving the Parties and/or their respective representatives (for purposes of this Section 5 only, collectively the "Claims") through the use of non-binding arbitration. In the event any Claim involves an amount in dispute in excess of \$1,000,000, this Section 5.0 shall be of no force or effect.

Section 6. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California, without regard to the conflicts of laws rules thereof.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the 2nd day of May, 2002.

STATE OF CALIFORNIA DEPARTMENT
OF WATER RESOURCES, separate and
Apart from its powers and responsibilities
With respect to the State Water Resources
Development System

By: _____
Name: Peter S. Garris
Title: Deputy Director

CALPEAK POWER – PANOCHE LLC

By: _____
Name:
Title: